

# HOUSE BILL REPORT

## HB 2659

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**As Reported By House Committee On:**  
Transportation Policy & Budget

**Title:** An act relating to special fuel and motor vehicle fuel taxes.

**Brief Description:** Regulating collection of special fuel taxes and motor vehicle fuel tax.

**Sponsors:** Representatives Fisher, K. Schmidt, Radcliff, O'Brien and Murray; by request of Governor Locke.

**Brief History:**

**Committee Activity:**

Transportation Policy & Budget: 1/26/98, 2/5/98 [DPS].

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### HOUSE COMMITTEE ON TRANSPORTATION POLICY & BUDGET

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 23 members: Representatives K. Schmidt, Chairman; Hankins, Vice Chairman; Mielke, Vice Chairman; Mitchell, Vice Chairman; Fisher, Ranking Minority Member; Cooper, Assistant Ranking Minority Member; Backlund; Cairnes; Constantine; DeBolt; Gardner; Hatfield; Johnson; McCune; Murray; O'Brien; Ogden; Robertson; Romero; Skinner; Sterk; Wood and Zellinsky.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Chandler.

**Staff:** Roger Horn (786-7839).

**Background:** Washington imposes a tax of 23 cents per gallon on motor vehicle fuel (gasoline) and special fuel (mainly diesel) used for on-road purposes. The Department of Licensing (DOL) is responsible for the collection of these motor fuel taxes. The taxes are paid to the DOL by: (1) licensed fuel distributors who purchase untaxed fuel from refineries, terminals, or other licensed distributors and then sell the fuel, with taxes included, to unlicensed buyers; or (2) licensed special fuel bulk users, who purchase special fuel without fuel tax applied and pay tax to the DOL for any fuel subsequently used on-road. Motor fuel on which fuel tax is not applied is subject to sales and use tax.

There are about 500 licensed special fuel distributors and 240 motor vehicle fuel distributors in Washington. In addition, about 27,000 persons hold special fuel user

licenses that allow them to purchase special fuel into bulk storage without fuel tax applied and subsequently pay fuel tax on any of the fuel used on-road. Of this number, nearly 21,000 farmers, loggers and contractors, who have certified that they have no diesel-powered vehicles licensed for on-road use, have special licenses that exempt them from submitting tax reports to the DOL.

In a 1994 report the Federal Highway Administration estimated that fuel tax was being evaded on 3 to 7 percent of gasoline gallons and 15 to 25 percent of diesel gallons in the United States. In 1996 a task force convened by the Legislative Transportation Committee (LTC) concluded that it is likely that there is significant evasion of fuel taxes occurring in Washington and made recommendations as to how the issue could be addressed.

There are several methods used to evade paying state fuel taxes. Following are four examples of evasion schemes.

One method, referred to as "daisy chaining," involves selling fuel several times in tax exempt transactions between licensed distributors. These transactions may be "paper transactions" where the fuel does not physically change hands. By daisy chaining, an evader creates an audit trail that is very difficult to trace and, if the ultimate taxable transaction is found, the distributor is often a fictitious company from which the fuel tax is not collectible.

A second type of evasion involves illegal importing and exporting of motor fuel. Because Washington borders on Oregon which does not apply fuel tax on diesel fuel, and British Columbia which has a different tax structure than Washington, cross-border smuggling can be very profitable. In addition, a distributor can evade taxation by purchasing fuel for export, in which case the fuel is purchased tax-free, and then selling the fuel in the state, collecting tax on the fuel, and not remitting the tax.

A third method of evasion is referred to as cocktailing or blending. In this scheme, untaxed fuels such as kerosene or recycled oil are blended with diesel fuel and the blended fuel is sold with tax included, but only the tax on the diesel fuel is remitted to the state.

A fourth method of avoiding taxation is by claiming an exemption on fuel that was used for taxable purposes. For example, licensed special fuel bulk users who purchase special fuel without the fuel tax applied can evade fuel taxes by under-reporting the amount of fuel used on-road.

Other states and the federal government have implemented law changes to address evasion that have resulted in significant revenue increases. These changes include moving the point of collection for motor vehicle fuel and special fuel taxes to a higher

point on the fuel distribution chain, requiring that tax exempt fuel be dyed, and implementing measures to control illegal importing and exporting,

The federal government, which imposes taxes of 18.4 cents per gallon on gasoline and 24.4 cents per gallon on diesel fuel, collects the taxes directly from refiners and terminal operators (suppliers) who sell to distributors. The tax structure used by the federal government is referred to as "tax at the rack," referring to the terminal rack which is the platform or bay at which fuel from a refinery or terminal is delivered into trucks, railcars or vessels. The federal government also requires that any diesel fuel sold tax-free contain colored dye. At least 14 states have implemented tax at the rack and 27 require tax-exempt diesel fuel to be dyed.

Distributors are required to purchase a bond equivalent to three times their monthly fuel tax liability, up to a maximum of \$50,000. The minimum bond is \$500 for special fuel distributors and \$5000 for motor vehicle fuel distributors.

**Summary of Substitute Bill:** Effective January 1, 1999, motor vehicle fuel and special fuel taxes are imposed at the time of removal of special fuel from a terminal rack in Washington. The refiner, terminal operator, or party owning the fuel at the time of removal is required to collect taxes on the fuel and remit them to the DOL. For motor fuel that was removed from a terminal rack in another state and imported into Washington, the importer is liable for paying the fuel tax. Motor fuel purchased from a supplier for export out of Washington is not taxed. Motor fuel suppliers, distributors, exporters, importers and blenders must be licensed with the DOL.

An applicant for an importer or exporter license must be licensed or registered for motor fuel tax purposes in the states or countries in which the applicant intends to purchase or sell the special fuel, if licensing is required therein.

Dyed special fuel is exempt from the special fuel tax. A person may not operate a vehicle on a public road in this state with dyed special fuel in the vehicle's fuel supply tank, unless the use is authorized by the federal internal revenue code. Dyed special fuel must meet the dyed fuel requirements of the Internal Revenue Service. The penalty for using dyed special fuel to operate a vehicle upon the highways of the state is \$10 for each gallon of dyed special fuel placed into the vehicle's supply tank or \$1,000, whichever is greater. The penalties are deposited into the motor vehicle fund. Officers of the Washington State Patrol or other Commercial Vehicle Safety Alliance-certified officers are authorized to collect special fuel samples to check for the presence of dye.

Special fuel user licensing and reporting requirements are deleted. Special fuel users are not permitted to purchase clear diesel fuel into bulk storage without payment of the special fuel tax.

At the election of a distributor, farmers, logging companies and construction companies may purchase special fuel from card lock facilities directly into the supply tanks of nonhighway equipment or portable slip tanks for nonhighway use without payment of the special fuel tax. A distributor who sells special fuel in this manner is authorized to apply for a refund of taxes paid by the distributor on the fuel purchased by these users.

Distributors are required to remit special fuel taxes to the supplier of the fuel no later than two business days before the last day of the month following the month in which the fuel was purchased. The supplier must remit the taxes to the state on or before the tenth day of the month after which the distributor payments were due.

The shrinkage allowance for motor vehicle fuel taxes paid by distributors is increased from .25 percent to .3 percent. Special fuel distributors subject to pollution liability insurance agency fees (i.e., heating oil distributors) must file reports with the DOL annually.

The DOL is required to pay interest of 1 percent per month on special fuel and motor vehicle fuel tax refunds if the refund is issued more than 30 business days after the request for refund was received. A minimum of \$20 is set for refund claims, and DOL must waive the requirement to submit invoices with small refund requests. Refunds are not allowed until motor fuel is used for a nontaxable purpose. A person may receive a refund of fuel taxes that were paid on clear special fuel that was inadvertently mixed with dyed special fuel.

The maximum bond required of suppliers, distributors, exporters, importers and blenders is set at \$100,000.

Provisions are made for the transition to collection of special fuel taxes at the terminal rack.

Interstate trucking companies that used more than 20 percent of their special fuel gallons out of state in the previous year may receive special authorization from the DOL to purchase special fuel without payment of the special fuel tax at the time of purchase. This provision applies only to full truck-trailer loads of special fuel picked up at a terminal rack and delivered directly to the bulk storage facilities of the trucking company. Tax on the fuel is paid as part of the International Fuel Tax Agreement reconciliation at the end of each quarter.

Additional items are added to the information included in documentation carried by shippers of motor fuel.

The DOL is given authority to enter into cooperative agreements with other states or Canadian provinces: (1) to address mutual issues pertaining to fuel tax administration, collection and enforcement; (2) to require any person engaged in the business of selling,

purchasing, distributing, storing or transporting special fuel to submit periodic reports regarding the distribution of such fuel; and (3) to develop and adopt rules to implement this act.

Language is added to clarify that the ultimate liability for fuel taxes is upon the fuel user regardless of the manner in which fuel taxes are collected.

**Substitute Bill Compared to Original Bill:** The substitute bill requires suppliers to submit taxes on the tenth of the month following the month in which distributor payments were due, rather than five state business days after the distributor payments were due.

The provision in the substitute bill allowing certain interstate trucking companies to purchase special fuel without paying fuel tax at the time of purchase replaces a provision that would have allowed interstate trucking companies that were buying fuel in bulk under a special fuel user license prior to January 1, 1999, to take a 5 percent credit against the special fuel tax liability reported for the fourth quarter of 1997, and to spread payment of the tax due over a 12-month period, paying a minimum of one-twelfth of the amount due each month.

The substitute bill adds the provision allowing farmers, logging companies, and construction companies to purchase non-dyed special fuel from card lock facilities without payment of the special fuel tax in certain cases.

The substitute bill adds a \$20 minimum for refund claims, the authority for DOL to waive the requirement to submit invoices with small refund requests, the requirement for DOL to pay interest on refund claims on motor vehicle fuel taxes, and the provision not allowing refunds until motor fuel is used for a nontaxable purpose.

The substitute bill increases the bonding requirement for motor vehicle fuel distributors from \$50,000 to \$100,000 to be consistent with the requirement for special fuel dealers; adds a requirement for special fuel distributors subject to pollution liability insurance agency fees to file reports with DOL annually; increases the shrinkage allowance for motor vehicle fuel taxes; and adds items required in documentation carried by shippers of motor fuel.

The substitute bill clarifies that exporters qualify for tax-free purchase of motor fuel only if the fuel is shipped directly to an out-of-state location; that fuel distributed to a tribal reservation is not considered an export; that dyed special fuel is not taxable; and that licensees need a separate license classification, not a separate license, for each activity requiring licensing.

The substitute bill gives DOL authority to develop and adopt rules to implement this act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect on January 1, 1999.

**Testimony For:** The bill would result in significantly increased gas tax revenue which is much needed for highway improvements. Tax evasion creates an unfair advantage for tax cheats who are competing against honest fuel distributors and retailers. The bill would make state law consistent with federal law. The number of licensees would be reduced dramatically. There is a great deal of evasion in Washington because it is so profitable. Recordkeeping for special fuel users would be reduced.

**Testimony Against:** None.

**Testified:** Jennifer Joly, Governor's policy office; Larry Pursley, Washington Trucking Association (pro/substitute bill); Greg Hanon, Western States Petroleum Association (WSPA) (pro/substitute); Doug Burdick, Chevron Products Company and WSPA (pro with amendment); Ken Leone, ARCO Products Company and WSPA (pro with amendment); Charlie Brown, Washington Oil Marketers Association (pro/substitute); Bruce Holmstrom, Vancouver Oil Company (pro/substitute with concerns); Paul Dennis, Dennis Petroleum (pro/substitute); Gary Forcum, Pettit Oil Products (pro/substitute); Steve Small, Don Small Oil (pro/substitute); Roger Dormaier, Washington Association of Wheat Growers (pro with concerns); and Dan Coyne, Washington State Council of Farmer Cooperatives (pro with amendment).